

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MARYLAND

Excerpted Transcript of Proceedings
Before the Honorable Marvin J. Garbis
Friday, October 26th, 2012
Baltimore, Maryland

For the Plaintiff:

Mark W. Crooks, AUSA

For the Defendant:

Howard L. Cardin, Esquire

Also Present: Nikki Martin, U.S. Probation

Special Agent Rachel Corn, FBI

Christine T. Asif, RPR, FCRR
Federal Official Court Reporter
101 W. Lombard Street, 4th Floor
Baltimore, Maryland 21201

1 EXCERPTED PROCEEDINGS
2

3 THE COURT: You should stand. This is a sad, sad
4 situation. Of course, I appreciate Mr. Stevens' statement. I
5 think it reflects that he is a deep thinker, who is searching
6 after truth within himself to find the reasons for why he did
7 what he did to guide him afoul of the legal system. And to
8 find peace within himself. This is not appropriate situation
9 for anybody to be lecturing to Mr. Stevens. I understand his
rationale, his thought, and his genuine remorse.

10 I do believe this is a serious offense. And I take
11 into account the factors of Section 3553(a). It is serious, I
12 do not think that there is a likelihood of recidivism for Mr.
13 Stevens. I think he needs peace and he is very, very
14 introspective. I do think that this is an appropriate case to
15 vary from the guidelines system. It is a very positive factor
16 that the prosecution agrees with that. And I do think that
17 the sentence that is under the sentencing guidelines is a
18 sentence that is within the range of reason, that it would be
19 affirmed if it's brought to the Court of Appeals. Therefore,
20 the sentence I will impose is the one that was agreed upon.
So that the sentence is 48 months with credit for time served.

22 Supervised release period is life, which is
23 appropriate. And some of these conditions are required by
24 virtue of the circumstances. But in any event, the conditions
25 of release would be that the defendant shall participate in

1 any mental health treatment program approved or directed by
2 the probation officer, that could include evaluation,
3 counseling, testing. The same thing with regard to any
4 substance abuse program, although, I have not specifically
5 heard here about a substance abuse problem. That should be a
6 condition of supervised release.

7 The defendant should not use a computer system,
8 internet capable device, or similar electronic device at any
9 location without prior approval of the probation officer. And
10 shall cooperate with the probation officer in regard to
11 monitoring and enforcing compliance with this.

12 The defendant is required to comply with the
13 requirements of the Sex Offender Registration and Notification
14 Act. And that's 42 U.S.C. Section 16901, et seq., and as
15 directed by the probation officer and the Bureau of Prisons or
16 any state registration agency applicable to a place where he
17 resides or is a student, or was convicted of a qualifying
18 offense.

19 Also, the defendant shall have no contact with
20 persons under the age of 18 unless approved by the U.S.
21 probation officer. Although, I do not see a reason to think
22 that the defendant would do it, the condition of supervised
23 release requires a defendant not to congregate or loiter near
24 schools, parks, playgrounds, arcades or other places
25 frequented by children under the age of 18, unless approved by

1 the probation officer. If there is unauthorized contact with
2 persons under the age of 18, even inadvertently, they must be
3 reported to the probation officer within 24 hours. This does
4 not relate to people under 18 with whom the defendant would be
5 contacting in regards to ordinary and usual commercial
6 services, such as to buy something or to sell something in a
7 store.

8 Also, the defendant must cooperate in the collection
9 of DNA as directed by the probation officer.

10 There's no fine. There is a special assessment of
11 \$100 which is mandatory.

12 Mr. Cardin, is it feasible to have that paid soon?

13 MR. CARDIN: It is, Your Honor. In fact, I have
14 been provided with a check so that we can have that paid
15 immediately.

16 THE COURT: So that would be paid immediately. All
17 right is there anything else with regard to sentencing.

18 MR. CROOKS: Your Honor, two quick matters. First,
19 at this time the government's moving to dismiss the top count,
20 which is Count 1 of the indictment. In addition to that, the
21 plea agreement contemplates forfeiture. I'm remiss, Your
22 Honor, in that I didn't come with a forfeiture order, but with
23 the Court's leave I'll file that with Your Honor through
24 Pacer. And it will just reflect the items that are mentioned
25 in the plea agreement.

1 THE COURT: Mr. Cardin, is that agreeable?

2 MR. CARDIN: It is, Your Honor.

3 THE COURT: All right. And the last thing I would
4 say formally is that in the event that somebody would want to
5 have appellate review of what I've done, and I'm not
6 questioning the fact that there's waivers in the plea
7 agreement, et cetera, with regard to any appellate rights. In
8 any event, if for any reason, there's a need, somebody wants
9 an appellate review, it's got to be filed within 10 days of
10 the entry of judgment.

11 So this is just after -- if Mr. Cardin is directed
12 to file a notice of appeal by his client he must file it,
13 whatever he thinks of the action. And write a letter to the
14 client, Mr. Stevens, saying I filed the notice of appeal. I
15 just say that because I'm required to say that in every case.
16 So if there's a request for an appeal, and it's not filed and
17 there's no letter within a week, just write the clerk of the
18 Court and we'll take care of it.

19 MR. CARDIN: I understand. Your Honor, I have
20 several comments or requests to make of the Court on behalf of
21 my client.

22 THE COURT: Yes.

23 MR. CARDIN: First, we are requesting that the Court
24 recommend that my client be incarcerated at the institution in
25 Cumberland. We are trying to keep him as close, if you will,

1 to home as possible.

2 THE COURT: Very well.

3 MR. CARDIN: There is --

4 THE COURT: Mr. Thompson, that should be in the
5 judgment.

6 MR. CARDIN: And I think --

7 THE CLERK: Did you say Cumberland?

8 MR. CARDIN: Cumberland, yes.

9 MR. CARDIN: I'm also requesting the Court rather
10 than --

11 THE COURT: Are we talking -- I think of it as
12 Hagerstown, but it's Cumberland? We're talking about the
13 right place.

14 MR. CARDIN: It's Cumberland.

15 THE COURT: All right.

16 MR. CARDIN: And No. 2, Your Honor, the presentence
17 report is rather detailed with regard to my client's substance
18 abuse history, we would ask the Court to recommend the 500
19 hour RDAP program.

20 THE COURT: Yes, I will. I misspoke, I hadn't
21 considered that.

22 MR. CARDIN: All right.

23 THE COURT: That recommendation is made.

24 MR. CARDIN: And the third comment I make, Your
25 Honor the Court may recall there was some comment about it at

1 the time of the taking of the plea. Under the case of *United*
2 *States versus Hernandez-Santiago*, which is a 2nd Circuit
3 Court, 92 F.3d 97, and followed at times by Judge Motz, and I
4 will tell the Court that, that the fact that a person has been
5 in pretrial custody at a maximum security institution, ones
6 which lack proper ventilation, educational and recreational
7 programs, libraries, poor food, poor sanitation, and I can go
8 on and on. My client alluded to the fact that the Chesapeake
9 Detention Facility should be closed. We're suggesting to the
10 Court that my client should be given credit or additional
11 credit against his sentence because of the intolerable
12 situation that he along with others are forced to suffer
13 during pretrial detention.

14 THE COURT: Mr. Cardin, first of all, how long was
15 he so incarcerated?

16 MR. CARDIN: It's six months, Your Honor.

17 THE COURT: All right.

18 MR. CARDIN: And I would point out he initially was
19 released, and then because of third-party custodian issues he
20 was taken into custody. Correct?

21 MR. CROOKS: That's correct. And, Your Honor, I
22 don't know if Your Honor's entertaining this, but I hope it
23 goes without saying that the government opposes this. Almost
24 every case they have a defendant, you know, is subject to the
25 same -- the same conditions.

1 Indeed, sometimes when a defendant agrees to serve
2 in assistance to the government, to pursue other
3 investigations, they actually end up spending a longer period
4 of time at Chesapeake Detention Facility, formerly Supermax,
5 for a longer period of time than it would ordinarily take to
6 reach BOP, where most people, I guess, agree that the
7 conditions are better. And even in that instance, in fact,
8 I'm thinking of a case that's actually pending before Your
9 Honor where that's true, even in that case we don't move to
10 agree to extend extra credit or extra time based on pure
11 speculation about conditions, absent a hearing, where we have
12 to put on facts and hear about specific harms that this
13 particular defendant has undergone. So, Your Honor, the
14 government strongly opposes the motion.

15 MR. CARDIN: Your Honor, may I just respond here and
16 then I'll leave it?

17 THE COURT: Yes.

18 MR. CARDIN: It is my recollection that this issue
19 was part of the plea negotiations and the government would not
20 oppose this request.

21 THE DEFENDANT: That is correct.

22 MR. CROOKS: Your Honor, paragraph 10 of the plea
23 agreement, I feel like I got hit with a left hook in the chin
24 here. Mr. Cardin called me on the eve of the plea agreement
25 and said can we just make sure in writing that he gets credit

1 for the time served at CDF. And that's what I understood that
2 to be. And unequivocally someone did. But I understood that
3 was so he could show his client that his client would be given
4 credit for federal time, which is different from, of course,
5 state custody where the defendant also briefly spent a period
6 of time when he was arrested after this case. And that, of
7 course, would be another matter if we agreed to pull that in.
8 But the plea agreement contemplates simply that he be given
9 credit. And I don't think anyone's denying that. And that's
10 what the plea agreement contemplated, Your Honor.

11 MR. CARDIN: And I'll respond that we discussed it
12 in open court. And I'll leave it at that, Your Honor.

13 THE COURT: All right. Let's put it this way: I
14 recognize the issue. The one thing that I think I would do is
15 something that I do routinely, and at least when requested,
16 that in as much as the defendant served a period of time in
17 pretrial detention, and which in effect means he does not have
18 the ability to earn good time credit for that period, as I
19 believe I've done in virtually every case I've had, in effect
20 I think he gets the good time credit, and if he served six
21 months the good time credit is more or less it's 54 days a
22 year. So that's more or less 15 percent. It's rounded off to
23 a month. The sentence would be 47 months taking that into
24 account, not 48 months.

25 MR. CARDIN: Thank you, Your Honor.

1 THE COURT: All right. I mean, but that's under the
2 circumstances. All right. Thank you.

3 THE CLERK: You're giving him credit for time served
4 in federal custody?

5 THE COURT: Well, it's credit for time served, but
6 the sentence is 47 months not 48 months.

7 THE CLERK: Okay. I need to know how much time you
8 give him credit for if you want that in the JNC.

9 THE COURT: When did he start?

10 THE CLERK: That's what I mean.

11 THE COURT: A matter of record.

12 MR. CARDIN: I think it was May 1st.

13 MR. CROOKS: Right. The very beginning of May. But
14 I understand it's still a 48-month sentence, Your Honor. Your
15 Honor's just saying that the same 15 percent credit, it would
16 be afforded if, say, that were all time in BOP post-trial he's
17 eligible for, but we're not reducing his sentence.

18 THE COURT: No, no, no the sentence is 47 months not
19 48 months, because he can't get that credit.

20 MR. CROOKS: Oh, I see.

21 THE COURT: That's all. But the credit --

22 MR. CROOKS: I understand.

23 THE COURT: He can't get the good time. But the
24 credit is for whatever time he was in custody, which is some
25 amount.

1 MR. CROOKS: I understand. So you've reduced it by
2 a month to be tantamount to what he would have gotten --

3 THE COURT: Yes.

4 MR. CROOKS: I understand. So it's a 47-month
5 sentence.

6 THE CLERK: I still need to know the date.

7 MR. CROOKS: May the 2nd.

8 THE COURT: The 48 is corrected to 47.

9 THE CLERK: May 2nd?

10 MR. CROOKS: I believe that, or May 3rd actually, is
11 the day I have.

12 MR. CARDIN: We would agree to May 3rd.

13 THE COURT: All right. Thank you.

14 (The proceedings were concluded.)

15 I, Christine Asif, RPR, FCRR, do hereby certify that
16 the foregoing is a correct transcript from the stenographic
17 record of proceedings in the above-entitled matter.
18 _____/s/_____
19 Christine T. Asif
20 Official Court Reporter
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